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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MATTHEW HERLIHY and ANTHONY
LAURIELLO, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

WILLIAM MCFARLAND, an individual;
JEFFREY ATKINS p/k/a JA RULE, an
individual; GRANT MARGOLIN, an individual;
FYRE MEDIA, INC., a Delaware Corporation;
and DOES 1 through 50, inclusive;

Defendants.

Civil Action No.: 17-cv-03296 (PKC)

ANSWER, AFFIRMATIVE DEFENSES,
CROSS CLAIMS OF DEFENDANT
JEFFREY ATKINS

DEMAND FOR JURY TRIAL

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Defendant, Jeffrey Atkins (hereinafter "Atkins"), individually (which includes his purported connections and/or involvement with the co-defendant entities), by his attorneys Sclar Law Group LLP, as and for an Answer to the Complaint (the "Complaint") of plaintiffs, Matthew Herlihy and Anthony Lauriello (individually and on behalf of all others similarly situated) (hereinafter referred to herein as the "Plaintiffs"), respectfully alleges as follows:

1. Atkins denies each and every allegation contained in paragraph 1 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

2. Atkins denies each and every allegation contained in paragraph 2 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants.

3. Atkins denies each and every allegation contained in paragraph 3 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants.

4. Atkins denies each and every allegation contained in paragraph 4 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants.

5. Atkins denies each and every allegation contained in paragraph 5 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants.

6. Atkins denies each and every allegation contained in paragraph 6 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or

information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

7. Atkins denies each and every allegation contained in paragraph 7 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants.

8. Atkins denies each and every allegation contained in paragraph 8 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants.

9. Atkins denies each and every allegation contained in paragraph 9 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants.

10. Atkins denies each and every allegation contained in paragraph 10 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

AS AND FOR THE
STATEMENT REGARDING THE PARTIES

11. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint.

12. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint.

13. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint.

14. Atkins denies each and every allegation contained in paragraph 14 of the Complaint, except states that defendant, Billy McFarland ("McFarland"), was responsible for the day-to-day business operation and that McFarland used Atkins' name, notoriety, and artistic abilities to Atkins' detriment and admits that he is a resident of Saddle River, New Jersey.

15. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint.

16. Atkins denies each and every allegation contained in paragraph 16 of the Complaint, except states that McFarland was responsible for forming, incorporating, and managing the day-to-day operations of defendant, Fyre Media, Inc. ("Fyre Media"), and that McFarland used Atkins' name, notoriety, and artistic abilities to Atkins' detriment.

AS AND FOR AN ANSWER TO THE
JURISDICTIONAL STATEMENT AND VENUE

17. Atkins denies each and every allegation contained in paragraph 17 of the Complaint and respectfully refers all questions of law to the trial Court of this action.

18. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint and respectfully refers all questions of law to the trial Court of this action.

AS AND FOR AN ANSWER TO
THE FACTUAL BACKGROUND

19. Atkins denies each and every allegation contained in paragraph 19 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or

information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

20. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint.

21. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint.

22. Atkins denies each and every allegation contained in paragraph 22 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants.

23. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint.

24. Atkins denies each and every allegation contained in paragraph 24 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

25. Atkins denies each and every allegation contained in paragraph 25 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants.

26. Atkins denies each and every allegation contained in paragraphs 26 and 26(a) through and including 26(o) of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other

allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

27. Atkins denies each and every allegation contained in paragraph 27 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants.

28. Atkins denies each and every allegation contained in paragraph 28 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants.

29. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint.

30. Atkins denies each and every allegation contained in paragraphs 30 and 30(a) through and including 30(g) of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

31. Atkins denies each and every allegation contained in paragraph 31 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants.

32. Atkins denies each and every allegation contained in paragraph 32 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or

information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

33. Atkins denies each and every allegation contained in paragraph 33 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

34. Atkins denies each and every allegation contained in paragraph 34 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants.

35. Atkins denies each and every allegation contained in paragraph 35 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

36. Atkins denies each and every allegation contained in paragraph 36 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

AS AND FOR AN
ANSWER TO PLAINTIFF'S EXPERIENCE

37. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint.

38. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint.

39. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint.

40. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint.

41. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint.

42. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint.

43. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint.

AS AND FOR AN ANSWER TO
THE CLASS ACTION ALLEGATIONS

44. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the Complaint and respectfully refers all questions of law to the trial Court of this action.

45. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Complaint and respectfully refers all questions of law to the trial Court of this action.

46. Atkins denies each and every allegation contained in paragraph 46 of the Complaint and respectfully refers all questions of law to the trial Court of this action.

47. Atkins denies each and every allegation contained in paragraph 47 of the Complaint and respectfully refers all questions of law to the trial Court of this action.

48. Atkins denies each and every allegation contained in paragraph 48 of the Complaint and respectfully refers all questions of law to the trial Court of this action.

49. Atkins denies each and every allegation contained in paragraph 49 of the Complaint and respectfully refers all questions of law to the trial Court of this action.

50. Atkins denies each and every allegation contained in paragraph 50 of the Complaint and respectfully refers all questions of law to the trial Court of this action.

AS AND FOR AN ANSWER TO COUNT I

51. Atkins repeats and realleges each and every response contained in the paragraphs above as if set forth fully and at length herein in answer to paragraph 51 of the Complaint.

52. Atkins denies each and every allegation contained in paragraph 52 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

53. Atkins denies each and every allegation contained in paragraph 53 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

54. Atkins denies each and every allegation contained in paragraph 54 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

55. Atkins denies each and every allegation contained in paragraph 55 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

56. Atkins denies each and every allegation contained in paragraph 56 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

57. Atkins denies each and every allegation contained in paragraph 57 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

AS AND FOR AN ANSWER TO COUNT II

58. Atkins repeats and realleges each and every response contained in the paragraphs above as if set forth fully and at length herein in answer to paragraph 58 of the Complaint.

59. Atkins denies each and every allegation contained in paragraph 59 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

60. Atkins denies each and every allegation contained in paragraph 60 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

61. Atkins denies each and every allegation contained in paragraph 61 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

62. Atkins denies each and every allegation contained in paragraph 62 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

63. Atkins denies each and every allegation contained in paragraph 63 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

AS AND FOR AN ANSWER TO COUNT III

64. Atkins repeats and realleges each and every response contained in the paragraphs above as if set forth fully and at length herein in answer to paragraph 64 of the Complaint and further denies each and every allegation contained in paragraph 64 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

65. Atkins denies each and every allegation contained in paragraph 65 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

66. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the Complaint and respectfully refers all questions of law to the trial Court of this action.

67. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 67, 67(a) through and including 67(z), 67(aa) through and including 67(yy) of the Complaint and respectfully refers all questions of law to the trial Court of this action.

68. Atkins denies each and every allegation contained in paragraph 68 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

69. Atkins denies each and every allegation contained in paragraph 69 of the Complaint to the extent the allegations are alleged against him, but lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged against the other defendants and respectfully refers all questions of law to the trial Court of this action.

70. Atkins lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Complaint and respectfully refers all questions of law to the trial Court of this action.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction over the claims of Plaintiffs and the purported class.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

This Court lacks personal jurisdiction over Atkins excluding the defense of improper service of process.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Plaintiffs and the purported class fail to state a claim upon which relief may be granted and therefore, the Complaint must be dismissed.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The Complaint should be dismissed because the agreement(s) between the contracting party(ies) contain provision(s) that make(s) arbitration the sole remedy and bar class and/or collective actions.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

The Complaint and the causes of action contained therein may not be maintained because of collateral estoppel, contributory negligence, equitable estoppel, *res judicata*, doctrine of laches, waiver, payment, accord and satisfaction, release, statute of limitations, statute of frauds, failure of consideration, and the doctrine of unclean hands.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

The Complaint should be dismissed because Plaintiffs and the purported class failed to join necessary parties.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs and the purported class' Complaint are barred, in whole or in part, because the relief requested exceeds that available under applicable law.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

The damages claimed by Plaintiffs and the purported class, the existence of which is expressly denied, are barred to the extent they are speculative in nature.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

Plaintiffs and the purported class' claims are barred, in whole or in part, by their own actions.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

Plaintiffs and the purported class have failed to mitigate their damages, if any.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs cannot certify the purported class because the class is not numerous enough so that joinder of all members is impracticable.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs cannot certify the purported class because the questions of law and fact are not common to the class.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs cannot certify the purported class because Plaintiffs' claims are not typical of the purported class.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs cannot certify the purported class because Plaintiffs are not a suitable representative of the purported class.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs cannot certify the purported class because a class action is not superior to collective or individual actions.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs cannot certify the purported class because Plaintiffs' counsel is not experienced in class action litigation.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' purported class are not similarly situated and do not meet the prerequisites under Rule 23.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs and the purported class failed to plead fraud with specificity with regards to Atkins as required under Rule 9.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

The Complaint should be dismissed, because Plaintiffs and the purported class failed to demonstrate that Atkins committed fraud, made any misrepresentations, attempted to deceive them, and/or is otherwise liable under a legal theory of common law or statutory fraud, misrepresentation, or conspiracy to do the same.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

The Complaint should be dismissed, because Atkins was not in privity of contract with the Plaintiffs and the purported class.

AS AND FOR A TWENTY FIRST AFFIRMATIVE DEFENSE

Plaintiffs and the purported class lack standing to maintain a suit for the claims contained in the Complaint.

AS AND FOR A TWENTY SECOND AFFIRMATIVE DEFENSE

The Complaint should be dismissed because Plaintiffs and the purported class failed to plead allegations to pierce the corporate veil and/or otherwise provide any basis for liability against Atkins. Alternatively, if allegations to pierce the corporate veil were alleged, Plaintiff and the purported class did so broadly and failed to provide a factual basis for personal liability against Atkins.

AS AND FOR A TWENTY THIRD AFFIRMATIVE DEFENSE

The Complaint should be dismissed because Plaintiffs and the purported class failed to establish a *prima facie* case for violations under their state law claim that Atkins, individually, falls under the statute. Also, Atkins is otherwise exempt.

JURY DEMAND

Atkins hereby demands trial by jury of all issues so triable.

AS AND FOR A CROSS-CLAIM
AGAINST ALL NAMED CO-DEFENDANTS

1. Upon information and belief, defendant, Billy McFarland (“McFarland”), who was responsible for the formation, management, and overall day-to-day business operations of Fyre Media, Inc. (“Fyre Media”) *purportedly* gave an interest in said entity to defendant, Jeffrey Atkins, for his artistic knowledge and experience. Ultimately, however, McFarland hijacked Atkins’ artistic vision and used his name, notoriety, connections, and artistic abilities causing Atkins harm.

2. To the extent any damages were sustained by Plaintiffs and the purported class as alleged in the Complaint (which damages are specifically denied by Atkins), said damages were caused by the acts and/or omissions of McFarland, Fyre Media, Grant Margolin, and the DOES 1-50 and their agents, employees and such other persons other than Atkins, without the affirmative acts of Atkins contributing thereto.

3. Atkins has a claim for, *inter alia*, contribution and indemnification against all the defendants in this action.

WHEREFORE, defendant, Jeffrey Atkins, demands judgment dismissing Plaintiffs’ Complaint with prejudice, or in the event Plaintiffs recovers a verdict or judgment against defendant, Jeffrey Atkins, demands judgment against the co-defendants pursuant to the cross-

claim asserted herein, together with attorneys' fees, costs, disbursements, and such other relief this Court deems just and appropriate.

Date: New York, New York
September 11, 2017

SCLAR LAW GROUP LLP

By: 

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